in Malaysia paled in comparison to the run-away inflation in the United Kingdom.

With the oil crisis in 1973 inflation at a significant level finally hit our shores and the need to reflect this economic reality as a factor in the assessment of damages based on comparable awards came to be recognised by the Malaysian courts.

It has been suggested that the increase in awards should be equated with the Consumer Price Index which has not been done by any of our courts or the courts in Singapore. Even in England where it would appear that substantial increases have been made to the level of awards compared to awards given in the sixties, there does not seem to have been an attempt to equate the increase with the rise in the figures of the Consumer Price Index. While inflation certainly is a factor that has to be considered in considering comparable awards made in the earlier decades, the Consumer Price Index is only one of many factors that has to be had in mind in assessing the increase to be made in the award. In my view, *inter alia*, factors like the investment climate, the increase or decrease of returns on investment (for example the returns on fixed deposits have almost doubled since the sixties), the rate of acceleration of capital appreciation are all factors to be had in mind in considering the inflation factor in the context of reflecting it in an award of compensation. It is thus seen that a mathematical formula for the inflation factor cannot be devised and in any event there does not appear to be any compelling reasons to devise such a formula.

On the facts of the instant case for pain and suffering and loss of amenities I would award $75,000.

Accordingly, there will be judgment for the plaintiff as follows: —

(1)	Agreed special damages	$ 4,877
(2)	Loss of earnings up to date of judgment ...	14,400
(3)	Future loss of earnings	22,300
(4)	Services of a maid up to date of judgment	9,000
(5)	Services of a maid for the future	13,900
(6)	Pain and suffering and loss of amenities	75,000
	Total	$139,477

The above items (1), (2) and (4) shall bear interest at 4% per annum from the date of the accident; item (6) shall bear interest at 6% per annum from date of service of the writ; the judgment sum of $139,477 shall bear interest at 8% per annum from date of judgment until realisation.

The defendants will also pay the costs of the action.

Order accordingly.

Solicitors: *Richard Ho & Co.; V.P. Nathan & Partners.*

TRENGGANU STATE ECONOMIC DEVELOPMENT CORPORATION v. NADEFINCO LTD.

[O.C.J. (Salleh Abas F.J.) January 18, 1982]

[Kuala Trengganu — Civil Suit No. 7 of 1979]

Contract — Lease of oil palm estate — Payment of premium, rent and royalty — Calculation of royalty — Whether compound interest payable on amount outstanding.

The plaintiffs leased a piece of land in Trengganu to the defendants for a period of 46 years and the defendants in return undertook to clear and develop it into an oil palm estate. The defendants were also required to pay land premium and quit rent and also royalty "at the rate of one per cent of the nett sale of all oil palm produce for the land." The defendants fell into arrears with the payments and the plaintiffs brought an action to recover the debt and interest. The issues between the parties were —

(i) whether under clause 8(e) of the agreement the 1% royalty is to be calculated on the basis of finished product or on the basis of unprocessed oil palm fruits; and

(ii) whether the interest chargeable on the outstanding sum owed by the defendants is to be computed at compound interest or at simple interest.

Held: (1) in this case what the defendants wre required to sell and did sell was the oil, that is, the end product and therefore the royalty of 1% of the nett sale price must be determined on the basis of the end product and not on the basis of the unprocessed oil palm fruits;

(2) in this case there were circumstances showing that the defendants had made use of the sums owing to the plaintiffs and therefore the plaintiffs were entitled to charge compound interest on the sums due to them under the agreement regarding land premium, annual quit rent, development bonus and royalty.

Cases referred to:-

(1) *Woon Hoe Kan & Sons Sdn. Bhd.* v. *Bandar Raya Development Bhd.* [1973] 1 M.L.J. 60.
(2) *Riches* v. *Westminster Bank Ltd.* [1947] A.C. 390, 400.
(3) *Borthwick* v. *Elderslie S.S.* [1905] 2 K.B. 516, 520.
(4) *L.C.D. Rly* v. *S.E. Rly* [1893] A.C. 429, 440.
(5) *Page* v. *Newman* (1829) 9 B. & C. 378; 109 E.R. 140.
(6) *Bruce* v. *Hunter* (1813) 5 Camp. 466; 170 E.R. 1448.
(7) *Eaton* v. *Bell* (1821) B. & Ald 34; 106 E.R. 1106.
(8) *Morgan* v. *Mather* (1792) 2 Ves. 15; 34 E.R. 758.
(9) *In re Lloyd Edwards, Williams* v. *Trench* (1892) 61 L.J. Ch. 22.
(10) *Croskill* v. *Bower* (1863) 32 Beav. 86; 55 E.R. 34.
(11) *Newell & Anor.* v. *Jones* (1830) 4 C. & P. 124; 172 E.R. 636.
(12) *Williamson* v. *Williamson* (1868-9) L.R. 7 Eq. 542.
(13) *A.G.* v. *Alford* (1855) 4 De G. U & G 841; 43 E.R. 737.
(14) *Burdick* v. *Garrick* (1869-70) L.R. 5 Ch. Ap. 233.
(15) *Wallersteiner* v. *Moir* (No. 2) [1975] Q.B. 373, 388, 397.

CIVIL SUIT.

W.C. Huat for the plaintiff.

S.C. Loh for the defendant.

Cur. Adv. Vult.

Salleh Abas F.J.: The plaintiffs are a statutory body established under Trengganu Enactment No. 3 of 1965 and the defendants are a company incorporated under the Companies Act, 1965. On December 8, 1965 the parties entered into a written agreement (P6 pages 3-7) concerning approximately 33,500 acres of land in the Mukim of Bandi and Tebak in the Districts of Kemaman, Trengganu for the purpose of planting oil palms. By this agreement the plaintiffs leased

this land to the defendants for a period of forty-six years and the defendants in return undertook to clear and develop it into an oil palm estate and to incorporate a subsidiary management company to run and manage the estate. Under clause 8 of the agreement, the defendants are required to make the following payments: —

(i) land premium at the rate of $100 per acre of cultivable land — clause 8(a);

(ii) annual quit rent at the rate of $2 per acre for the first four years and thereafter at the rate of $10 per acre — clause 8(c);

(iii) development bonus at the rate of $75 per acre for every acre of fully planted land sold or subleased by the defendants to members of the public — clause 8(d); and

(iv) royalty at the rate of one per cent of the nett sale price of all oil palm produce derived from the said land — clause 8(e).

In the absence of any evidence to the contrary, I assume that the defendants must have been irregular with these payments and probably must have defaulted several times, because by May 19, 1975 on plaintiffs' instruction, Messrs. Adnan & Wee sent a letter of demand (exhibit P1) on May 19, 1975 requiring the defendants to pay up within ten days a sum of $1,330,768.06, being the amount due on those four items. In reply the defendants wrote to the plaintiffs on May 27, 1975 (exhibit P2) disputing that they owed the plaintiffs in the sum of $1,330,768.06. They however, admitted that their debt was only $1,015,583.23. The difference is apparently due to the manner in which the one per cent royalty was computed because the plaintiffs' computation was on the basis of finished product whilst the defendants calculated the royalty on the basis of unprocessed fruits.

Now let us revert back to the letter exhibit P2. In this letter the defendants made three alternative proposals one of which is to pay the plaintiffs "on or before the end of 1977 with interest at 11% per annum". The other two alternatives are not relevant to the issue to be decided in this case. On receipt of this letter, the plaintiffs wrote back on June 14, 1975 a letter (exhibit P3) asking for certain clarifications, one of which was "further clarification regarding the 11% interest per annum" and "the date of commencement of the interest due". The defendants gave their reply in their letter dated June 25, 1975 (exhibit P4) and wrote therein as regards interest the following: —

"As regards to the date of commencement of the 11% interest per annum, we propose to be from 1st July 1975."

It is observed that the defendants gave no answer at all to the request for "further clarification" and said nothing about the method of computation of interest, whether it was simple or compound interest.

Despite their promise to pay up the sum due together with 11% interest on or before the end of 1977 the defendants continued to default in fulfilling this promise. By the end of 1978, the amount of debt the defendants owed to the plaintiffs stood at a total sum of $1,362,274.61, inclusive of a sum of $446,442.75 by way of interest for the years 1975, 1976, 1977 and 1978 calculated at yearly rests (compound interest). The plaintiffs made another demand through their solicitors on December 4, 1978, but the defendants failed to make any payment (paragraph 7 of the statement of claim). Finally on February 24, 1978 the plaintiffs took out a writ against the defendants to commence this suit for the recovery of this debt and interest.

When the case came before me for hearing on December 22, 1981, both counsel intimated to me that there was no dispute as to facts as well as to the figures computed by the plaintiffs. Counsel for the defendants agreed to the computation sheet produced by the plaintiffs marked as exhibit P5. Because there are some amendments which parties agreed to be made to the computation, I ordered that a fresh computation sheet should be furnished. At the time of writing this judgment exhibit P5 is with the plaintiffs and the fresh computation sheet is not yet submitted. However, as the parties do not dispute the figures, their absence does not make much difference to this judgment.

The issues between the parties are simply these —

(i) whether under clause 8(e) of the agreement the one per cent royalty is to be calculated on the basis of finished product or on the basis of unprocessed oil palm fruits; and

(ii) whether the interest chargeable on the outstanding sum owed by the defendants is to be computed at compound interest or at simple interest.

The parties agreed that if royalty is calculated on the basis of the finished product, the sum owed by the defendants on this item as at the date of the writ was $895,831.86. On the other hand if the royalty is calculated on the basis of unprocessed fruits as contended by the defendants, the sum owed would be $703,689.69. The parties also agreed that the total amount of interest is $466,442.75 if calculated at compound interest and $401,108.55 if calculated at simple interest.

As regards the first issue, I set out below the wording of clause 8(e) of the agreement: —

"The company shall pay to the State Corporation a royalty at the rate of one per cent (1%) of the nett sale price of all oil palm produce derived from the said lands."

Counsel for the defendants submitted that the phrase "all oil palm produce derived from the said lands" must be referable to the function of the management company, which the defendants undertook to incorporate. According to paragraph (3) of the preamble of the agreement, amongst the objects of the management company is to provide suitable facilities plant and factory "for the efficient harvesting processing marketing and sale of the oil palm produce from the said lands". Paragraph (f) of clause 10 repeats the function of the management company as, *inter alia*, "harvesting processing marketing and sale of all oil palm produce from the said lands". Paragraph (h) of clause 10 requires the management company to construct a factory for the processing of "all oil palm produce from the said lands". Paragraph (i) of clause

10 requires the management company to manage the oil palm estate as an economic unit "including the harvesting processing marketing and sale of all oil palm produce from the said lands...." And finally under paragraph (j) of clause 10 the management company is entitled to a management bonus of 10% from "the nett profits before any appropriations for income tax, the nett profits being "the income derived from the said lands" reduced by the one per cent royalty due to the plaintiffs and further reduced by all outgoing expenses incurred by the management company in managing the estate. Thus counsel for the defendants submitted that the phrase "oil palm produce derived from the said lands" in clause 8(e) must mean the fresh and unprocessed oil palm fruits, because these are the products of the lands. The oil obtained from these fruits, he submitted, is not the "produce derived from the said lands".

Whilst I agree that clause 8(e) must be construed with reference to the preamble and other provisions of the agreement so that this clause must be interpreted in the light of the whole document, I do not, however, accept the conclusion suggested to me by counsel for the defendants. Under this clause the royalty is calculated on "the nett sale of all oil palm produce derived from the said lands." It is admitted by counsel for the defendants that the management company does not sell the unprocessed fruits. What is sold to the third parties or the world at large is the oil obtained after such fruits undergoing factory process or treatment. That being the case, the proceeds of the sale of this oil less sale expenses are the nett sale price and it is upon this amount that the one per cent royalty has to be computed. I attach no special significance to the phrase "produce derived from the said lands". The oil obtained from the oil palm fruits is just as much "produce derived from the said lands" as the unprocessed oil palm fruits are. In my view the governing phraseology which determines the basis of royalty calculation is the expression "the nett sale price". Clearly by adopting the defendants' method of calculation royalty cannot be calculated on the basis of "the nett sale price" because as the fruits are not sold there is no sale price at all, let alone the nett sale price. In that case royalty could only be computed on the basis of the value, which the parties have to agree, of the unprocessed fruits. In my judgment this method of calculation is completely contrary to the intention of the parties as evinced in clause 8(e) and other provisions of the agreement.

The interpretation which I place on this clause is fully supported by other clauses which deal with the purpose and function of the management company. The plaintiffs as owners of the land were desirous of developing it into an oil palm estate. They then struck a bargain with the defendants in that in return for certain payments including royalty the plaintiffs leased the land to the defendants, who would clear the land off the jungle and plant oil palm trees on it and thereafter leave the management of the estate in the hands of a management company, which the defendants undertook to incorporate. Under paragraph 3 of the preamble as well as paragraph (f) of clause 10 of the agreement the functions of the management company are "harvesting processing marketing and sale of all oil palm produce from the said lands." I do not accept that the phrase "all oil palm produce from the said lands" has only a single meaning, i.e. only refers to unprocessed fruits. Whilst I agree that with reference to the function of harvesting and processing, the phrase must bear the meaning of unprocessed oil palm fruits, because only unprocessed fruits can be the objects of harvesting and processing I do not, however, accept that with reference to this company's function of marketing and sale the phrase "all oil palm produce from the said lands" also has the same meaning, i.e. the unprocessed fruits. In my judgment it is clear from the order in which the words "marketing and sale" appear in the whole phraseology, i.e. after the words "harvesting processing" that what is to be marketed and sold are not the unprocessed fruits but the end product, i.e. the oil, produced from the fruits as a result of "processing". The intention not to market and sell the unprocessed fruits, but the oil produced after these fruits undergoing factory process and treatments is made clear by paragraph (h) of clause 10 in that the management company is required to construct a factory for "the processing of all oil palm produce from the said lands". Here of course the words "all oil palm produce" must mean the unprocessed fruits, and the construction of a factory is a part of the processing functions of the management company. It is therefore clear that the intention of the parties is that the fruits are not to be sold, but to be harvested and processed by the management company and that only the oil derived from such process is to be marketed and sold. Consistent with this intention neither the defendants nor its subsidiary, i.e. the management company ever sold the fruits. Because what the company is required to sell and does sell is the oil, i.e. the end product, the royalty of 1% of the nett sale price must therefore be determined on the basis of the end product and not on the basis of unprocessed fruits. Only with reference to the end product is the nett sale price obtainable. If unprocessed fruits were taken to be the basis of royalty calculation, this would be completely contrary to intention of the parties as they never intended that the fruits would be sold and accordingly they are not sold at all. There being no sale price available let alone the nett sale price how can the royalty therefore be calculated? To calculate it on the basis of the value of the unprocessed fruits is clearly a situation which was not intended at all by the parties. Thus I reject the submission of counsel for the defendants.

Frankly I do not think that the expression "all oil palm produce" should have such a definite meaning, as suggested by counsel for the defendants, in that it must only refer to the unprocessed fruits. This expression by itself is vague and has no greater significance than the word "rubber" or "rice" has when standing alone. The word "rubber" may refer to the rubber trees, or it may refer to the latex that flows from the bark of the trees after they are tapped or may even mean the rubber sheets after the latex has undergone some treatment process. Similarly the word "rice" may mean the padi plants, or it may mean the grains produced by the plants or the grains obtained after having been milled, or it may even refer to the

cooked meals that we eat. Similarly the expression "all oil palm produce from the said lands" must therefore be construed, not by itself standing alone, but in the light of other words appearing in the context in which it is used and all other clauses relating thereto. The single most important expression which determines the meaning of this phrase is the words "the nett sale price". Hence I rule that the royalty has to be calculated with reference to the end product and not on the basis of the unprocessed fruits.

I now come to the second issue — i.e. whether the interest to be calculated is a simple interest or a compound interest. Here I wish to express my disappointment at the lack of assistance which I received from counsel for the plaintiffs, who completely left the matter to me. Surely he could have referred to Halsbury or even, the legal practitioners' bible, the Annual Practice often referred to as the White Book. I do not know why no efforts were made in that direction. Leaving these remarks aside, I now proceed to discuss the law on interest. The subject is as fascinating as it is new to me. There seems to be a dearth of local authorities concerning the issue I am now called upon to decide. *Woon Hoe Kan & Sons Sdn. Bhd.* v. *Bandar Raya Development Bhd.*,[1] which was cited to me by counsel for the defendants is irrelevant to the present issue as that case turned upon the question of what rate should interest be charged in the absence of an agreement. However, by virtue of sections 3 and 5 of the Civil Law Act, 1956 (Revised Act 67), I therefore have to seek guidance by reference to the English law on the subject.

Interest is a sum of money representing the return for the use or the compensation for the retention by one person of a sum of money belonging to or owed to another. In essence it is regarded as representing a profit which the other person might have made if he had the use of the money or conversely the loss which he had suffered because he had not that use. In other words interest is a compensation for the deprivation of the use of money, which he is lawfully entitled to. (*per* Lord Wright in *Riches* v. *Westminister Bank Ltd.*[2]). As a result of almost two centuries of development by the common law courts and the courts of equity and also by Acts of Parliament it has now become a settled principle that interest is only payable, where there is an agreement express or implied or where the principal money has been wrongfully withheld or where there is a statute authorising the charging of interest. (*per* Collins M.R. in *Borthwick* v. *Elderslie S.S.*[3] 27 *Halsbury's* Laws of England 3rd Ed. page 8 and *per* Lord Herschell L.C. in *L.C.D. Rly* v. *S.E. Rly*[4] quoting with approval the judgment of Lord Tenterden in *Page* v. *Newman*[5]).

In the present case the agreement exhibit P6 pages 3-7 does not say anything about interest. The plaintiffs' claim for it is not based on it but on the defendant's letter dated May 27, 1975 (exhibit P2) and another letter dated June 25, 1975 (exhibit P4) and this claim is not at all disputed or denied by the defendants. They agreed that they had to pay interest at 11% per annum commencing on July 1, 1975. But what the parties dispute is the method of calculating the interest. Is it at yearly rests, i.e. compound interest as contended by the plaintiffs or is it by a simple interest as contended by the defendants? During the course of his submission counsel for the defendants referred me to proviso (a) to section 11 of the Civil Law Act, 1956 which enacts that:—

"Provided that nothing in this section shall authorize the giving of interest upon interest."

The short answer to this submission is that the interest chargeable in this case is not based on the statutory discretion given to the court under section 11 of the Civil Law Act, or under any other Act, but upon the agreement of the parties as evinced in exhibits P2, P3 and P4. Furthermore the language of section 11 itself leaves no room for doubt that in cases not covered by the section the court is not prohibited from giving interest upon interest. The fact that the court is not authorised does not mean that it is prevented from doing so. What therefore is the principle upon which the plaintiffs could claim the calculation of interest at rests?

In England it has now become settled law that compound interest can be charged when there is a contract, express or implied to that effect or where the party withholding the money has employed it in his business and has presumably earned this interest or where this interest is allowed in accordance with a usage of a particular trade or business.

Implied agreement to charge compound interest arises from the relationship of the parties or even from the customs of the trade. Thus an agent who advanced money for his principal in effecting insurances and other mercantile business was held to be entitled to charge interest at yearly rests upon the amount of principal due (*Bruce* v. *Hunter*[6]). Similarly where a party regularly sent to the other party an account charging that other party with compound interest, there being no protest or dissent by the latter, the parties were held to have agreed to the charging of such interest (*Eaton* v. *Bell*[7] and *Morgan* v. *Mather*[8]). On the other hand where no such agreement could be implied, compound interest cannot be charged. (*In re Lloyd Edwards, Williams* v. *Trench*,[9] *Croskill* v. *Bower*[10] and *Newell & Anor.* v. *Jones*[11]). In *Williamson* v. *Williamson*,[12] it was held that compound interest is incidental to the continuance of the relation of banker and customer. Of course the relationship between the plaintiffs and the defendants in our case is not that of a banker and his customer. Far from it, but *Williamson's* case is cited as an example to show that implication of compound interest in that case arose from the nature of the particular trade, namely banking business.

My search for a principle in the matter of interest convinced me more than ever that as a legal theory interest must be looked at from the angle of the owner of the money. It is by looking at the matter from this angle that led Lord Cranworth L.C. in *A.G.* v. *Alford*[13] to emphatically reject the idea that interest is a punishment for the accounting party who fails to pay the money on its due date. In that case the learned Lord Chancellor refused to award compound interest because he found as a fact that the executors who held the trust money uninvested did not make any profit, nor did the

circumstances of the case demonstrate that they made it. It is therefore obvious that as a matter of law compound interest could be allowed by the court if there are circumstances showing that the accounting party has made profits and derived benefits by withholding the money. This principle was reaffirmed by Lord Hatherley L.C. in *Burdick* v. *Garrick*[14] as being a sound principle. In this case Lord Hatherley refused to allow compound interest against a solicitor who withheld his clients' money and mixed it with the firm's account because the business of the solicitor is not such a business in which one makes profit out of money. A solicitor's profit arises from the time and labour which he spent upon the cases in which he is engaged. The rejection of punishment as a justification for allowing interest, be it simple or compound led Lord Wright in *Riches* v. *Westminster Bank Ltd.*[2] to propound a theory that the essence of interest is compensation for the deprivation of the use of money by the party entitled to it. Thus by looking at the interest from the point of view of the party entitled to the money it is possible to regard interest positively as a compensation for that party, because if the money had not been withheld from him, he would have been able to make use of it beneficially. The learned Lord Justice thus concluded that interest could be regarded either as representing the profit he might have made if he had the use of the money, or conversely as representing the loss he suffered because he had not that use. If interest is regarded as a compensation, what should be the measure of compensation? Here the court is compelled to look for that measure to what the accounting party did with money. If it is shown that he had made use of it as a working capital for his business or employed it in trade and has presumably earned interest or profits, the measure of compensation is compound interest. In *Wallersteiner* v. *Moir (No. 2)*[15] Lord Denning M.R. quoted with approval the judgment of Lord Hatherley L.C. in *Burdick* v. *Garrick*[14] which is as follows:

"The court presumes that the party against whom relief is sought has made that amount of profit which persons ordinarily do make in trade, and in these cases the court directs rests to be made — i.e. compound interest."

Similarly in the same case Buckley L.J. expressed the view that the justification for charging compound interest lies in the fact that profits earned in trade would be likely to be used as working capital for earning further profits.

The sum total of all these cases is that interest is not a punishment but a compensation for the party entitled to the money for being deprived of its use and that interest would be simple or at rests depending upon the circumstances of the case. It is simple interest if the accounting party simply keeps it or actually received such rate, but it is compound if the court could infer from circumstances that the money was used in the accounting party's business. With this principle in mind, I now turn to the facts of the present case to determine whether there are circumstances showing that the defendants had made use of the sums owing to the plaintiffs. For this purpose exhibit P2 is very important. This is a letter dated May 27, 1975 written by the defendants to the plaintiffs in reply to plaintiffs' solicitors' letter of demand dated May 19, 1975 (exhibit P1). In that letter (exhibit P2) I fail to find any statement implying that the oil palm estate was not a profitable venture, nor could I find any excuse at all for the defendants to withhold the sums due. The reasons for not paying these sums to the plaintiffs appear to be because the defendants were short of funds, having used the profits derived from the estate to plough back into the estate. At page 1 of this letter the defendants admitted "shortage of funds", and difficulty "to fund the scheme now in progress", meaning presumably the defendants' inability to get finance elsewhere. At the same page they also claimed "increase tie-up of funds in assets and stock in the Estates and Mill due to inflation". In other words the defendants used a lot of money to acquire assets for the management of the estate. At page 2, defendants stated that they needed further funds because they had to distribute all nett profits derived from the estate to the owners and sublesses of the oil palm estate. But the most telling statement is at page 4 of the letter in which the defendants said they themselves had not received any dividends despite their investment of $10 million, "not because there was no profits from the operation, but because we have to plough back all the available funds". It is therefore clear that the reason for the defendants witholding the money was not due to the fact that the estate is not a profitable business. It is a highly profitable venture, but the defendants ploughed back into the business all the money earned from the estate and thus received advantages. Under the agreement, it is not the responsibility of the plaintiffs to finance the estate. This financial responsibility is assumed by the defendants and it is on this basis that these large areas of land were leased to the defendants at ridiculously low premium. By making use of the money to which the plaintiffs were entitled the defendants in fact made the plaintiffs to be their financier without so saying. If the defendants were to borrow these sums elsewhere for their business they would have had to pay not simple interest, but compound interest, having regard to the practice of banks and other financial institutions; but by using the plaintiffs' money the defendants were spared from incurring that interest, and thus derived a good deal of benefits which they would not have otherwise enjoyed. It was in recognition of this fact — i.e. that the defendants had without any justification retained the plaintiffs' money — that led the defendants to propose in their letter that they would pay the sums due with interest at 11%. The offer, though couched in ambiguous language without at first stating the date of commencement and the type of interest, is clear enough to show that the defendants had categorically admitted their failure in their obligations under the agreement and that they failed in them absolutely. In reply to the plaintiffs' request for "further clarification" and the date of commencement, the defendants only answered the date of commencement to be from July 1, 1975, and purposely left unanswered the request for "further clarification". If the defendants meant interest to be simple interest, why did they not say so? Surely it was so easy for them to do so. The fact that they did not do so, in my view, clearly shows that by the dictates of their conscience the interest should be compound interest, and that they knew that the plaintiffs would accept nothing less than compound interest. But by remaining silent on this issue, they could hope

as this case shows, to dispute it at a future date. Applying the principle which I have enunciated in the preceding paragraphs, and having regard to exhibits P2, P3 and P4 I find that the plaintiffs were entitled to charge compound interest on the sums due to them under the agreement regarding land premium, annual quit rent, development bonus and royalty.

There is therefore a judgment for the plaintiffs in terms of their prayers (a) and (b) in paragraph 8 of their Statement of Claim, namely a sum of $1,362,274.61 and compound interest at 11% on this sum from January 1, 1979 to the date of payment, and also costs of this suit. The essence of compound interest is capitalisation of interest at intervals of six months or one year, as the case may be, and I cannot see the justice of further capitalisation on the date of payment. For as long as the sum in prayer (a) or any part of it remains unpaid this sum or the remaining sum should continue to carry compound interest at 11% at yearly rest. Thus logic and justice do not seem to dictate me to allow the plaintiffs' prayer (c).

Finally subject to what I said regarding prayer (c) the plaintiffs are entitled to the judgment with costs.

Order accordingly.

Solicitors: *Adnan & Wee; Joseph Tan & Tang.*

BRUNEI REPORT

CHEN FUNG YING & ORS. v. CHEE HATT SANG

[O.C.J. (Roberts C.J.) October 1, 1981]

[Bandar Seri Begawan — Civil Suits Nos. 57, 58, 59 & 69 of 1981]

Limitation — Fatal accident — Claim brought more than 12 months after death of persons — Scope of s. 3, Fatal Accidents Act 1846-1908 — Three-year period allowed by Limitation Enactment 1981 — Whether earlier provisions overruled — Fatal Accidents 1846-1908, s. 3 — The Law Reform (Miscellaneous Provisions) Act, 1934, s. 1(3) — Application of Laws Enactment 1951 — Limitation Enactment 1918, s. 3(v) — Limitation Enactment 1962, s. 5.

The present case concerns four consolidated actions against the defendant, the administrator of the estate of one Chee Hatt Kong, the driver of one of the two cars which collided on December 20, 1978. The plaintiff in the second action and driver of the car, Lim sued as administrator of the estate of one Hee, his former wife, who was killed in the said accident. The other three claims were brought by Chen and Hou, who were both passengers in the car driven by Lim, and by Lim on his own behalf, in respect of injuries sustained in the said collision.

The claim against the estate was brought one year and ten months after the grant of administration. The defendant made a preliminary objection to all four suits. He contended that all four actions were barred by effluxion of time, by virtue of the provisions of the Fatal Accidents Acts, 1846–1908 and the Law Reform (Miscellaneous Provisions) Act, 1934.

Held, dismissing the plaintiff's claims: (1) the earlier and special provisions of the Fatal Accidents Acts, giving a right where none existed before and imposing on such right of action a special limitation period, have not been affected by the later general provision;

(2) the justification for the time limits imposed by the Acts is as valid in Brunei as in the United Kingdom. The prime object of the restriction is to ensure that claims on behalf of an estate, and more particularly against an estate, shall be pursued with reasonable speed, so that the beneficiaries of the estate will be able to enjoy whatever share is due to them as soon as possible. To allow claims to be brought against the estate of deceased persons many years after death, would greatly inhibit the sensible and swift administration of their estates;

(3) on April 25, 1951, the provisions of the Fatal Accidents Acts and of the Law Reform Act, *in toto* and unamended, became part of the law of Brunei. The periods of limitation contained in the Fatal Accidents Acts and the Law Reform Act are preserved by section 5 of the Limitation Enactment 1962. Consequently none of the other provisions of the 1962 Enactment are applicable to claims which are based upon the Fatal Accidents Acts or the Law Reform Act;

(4) therefore the four claims were barred and no action could be maintained against the defendant.

Per curiam: "The limitation Enactment itself ... is based on an Indian Act which is more than 70 years old. It has clearly fallen badly behind English law which, since 1951, has lengthened the period during which an action can be brought under the Fatal Accidents Act to three years and may ... also have amended section 1(3)(c) of the Law Reform Act. Furthermore, the discretion which was conferred on a court by the Limitation Enactment 1918, to permit an action to proceed outside the limitation period in a proper case, has been conferred upon the courts in England by the 1975 Limitation Act. I suggest for the Attorney-General's consideration, that a discretion of this kind might be conferred on the Brunei Courts, so as to enable them to extend the period in the exceptional case."

Cases referred to:-

(1) *Jaafar bin Metali* v. *Sadiah bte Gunti* Civil Appeal No. 1 of 1978 *(unreported).*